

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 2

March 4, 2010

**SUBJECT: SUITABILITY FOR PROMOTION PROCEDURES AND APPEAL PROCESS  
FOR DENIAL OF PROMOTION**

**PURPOSE:** This Order establishes the procedures for the final background check on an employee who is due to promote and the appeal process for a denial of promotion.

**PROCEDURE:** Shortly before an employee is due to promote or when a request for reversion to a One-Day Status appointment is received, the Department shall conduct a final background check on the employee. The check will consist of the following:

**I. POSITION CONTROL SECTION, PERSONNEL DIVISION,  
RESPONSIBILITIES.**

- \* Send an "Anticipated Promotion to RANK" Intradepartmental Correspondence, Form 15.02.00, to the employee's commanding officer; and,
- \* Notify Medical Liaison Section, Personnel Division, of the names of employees being considered for promotion or reversion.

**Note:** Medical Liaison Section will determine if the employee has any medical restrictions that would prevent fulfillment of the essential functions of the promotion rank. A decision to deny promotion or reversion based on medical restrictions that prevent fulfillment of essential functions cannot be appealed through this process.

**II. ASSISTANT TO THE DIRECTOR, OFFICE OF ADMINISTRATIVE  
SERVICES, RESPONSIBILITIES.**

- \* Check with Internal Affairs Group, Professional Standards Bureau, to determine if the employee has received any sustained personnel complaints since the employee was placed on the list of eligibles for promotion;
- \* Check with Internal Affairs Group to determine if the employee has received any pending personnel complaints;

- \* Check with Employee Relations Group to determine if the employee has been administratively transferred, downgraded, or deselected from a bonus position since the employee was placed on the list of eligibles for promotion;
- \* Check with the Risk Management Executive Committee for any current duty restrictions; and,
- \* Brief the Director, Office of Administrative Services (OAS).

**III. DIRECTOR, OFFICE OF ADMINISTRATIVE SERVICES, RESPONSIBILITIES.** The Director, OAS, shall decide if the employee is no longer fit for promotion. The employee will be notified in writing of the decision. The notification shall include the specific reason(s) for the denial of promotion.

When determining whether to deny a promotion, the Director, OAS, shall give considerable weight to any of the following acts of misconduct:

- \* Acts of dishonesty or fraud;
- \* Felonies;
- \* Hit and run traffic collisions;
- \* Falsification of an official document;
- \* Driving under the influence;
- \* Inappropriate sexual or physical conduct;
- \* Failure to report misconduct of another employee or employees;
- \* Discrimination;
- \* Retaliation; and,
- \* Insubordination.

This list in no way restricts the Director, OAS, from considering any other sustained act of misconduct or pattern of misconduct that would be inconsistent with the duties and standards of performance for the promotional civil service rank.

A pattern of conduct for these purposes shall be defined as two or more sustained complaints concerning similar misconduct within 15 years prior to the date of the written examination. The Management Guide to Discipline shall be referred to for the purpose of categorizing complaints of similar misconduct.

**Note:** Failure to Appear and Failure to Qualify shall be combined.

The employee will have **20 calendar days** from the date of the notification to submit a request for Administrative Appeal, Form 01.84.00, to the Commanding Officer, Personnel Group.

**IV. COMMANDING OFFICER, PERSONNEL GROUP, RESPONSIBILITIES.**

The Commanding Officer, Personnel Group, shall conduct a Promotional Suitability Appeal Hearing no more than **30 calendar days** from the date of the Administrative Appeal request.

**Note:** Although the employee's right to a Promotional Suitability Appeal Hearing is governed by Section 9.0 of Memorandum of Understanding (MOU) No. 24 (Lieutenants and Below), the hearing rules and procedures set forth in this Order shall supersede the rules and procedures described in Section 9.0 of MOU No. 24.

If the Commanding Officer, Personnel Group, is not available during the 30 calendar days due to an absence from command, the hearing may be postponed a reasonable amount of time until he/she returns. If there is an exigent reason for the hearing to occur during an absence of the Commanding Officer, Personnel Group, the Director, OAS, shall appoint an appropriate uninvolved command or staff officer to conduct the hearing.

If the employee contends he/she has a conflict with the Commanding Officer, Personnel Group, as the Hearing Officer, the Director, OAS, shall determine the validity of the conflict and, if necessary, appoint an appropriate uninvolved command or staff officer to conduct the hearing.

The following rules will apply exclusively to these hearings:

- \* The employee will be allowed to have representation as defined in Section 10.0 of MOU No. 24;

**Note:** The lack of availability of the employee's representative of choice shall in no way delay the hearing beyond the 30-calendar day limit.

- \* Witnesses will be allowed at the discretion of the Hearing Officer. The employee may bring letters of recommendation and submit them for consideration by the Hearing Officer;
- \* The hearing will generally be limited to a review of the personnel material subsequent to being placed on the list of eligibles for promotion;
- \* The Hearing Officer may consider prior misconduct **only** if there is a clear nexus to recent misconduct that demonstrates a pattern of misconduct; and,
- \* The hearing may be recorded by the employee for the employee's use. The Department will not record the hearing.

The Commanding Officer, Personnel Group, shall submit a hearing report recommending the employee be promoted or denied promotion to the Chief of Police within 10 calendar days of the conclusion of the hearing.

The Chief of Police will make the final decision within 30 calendar days of receipt of the hearing report. The Chief shall send written notification to the employee of the final decision. A copy of the hearing report will be included with the notification. If the Chief decides to deny promotion, the written notification shall include a specific rationale for the decision.

**V. DOCUMENTS TO BE PROVIDED TO THE EMPLOYEE.** When promotion is denied, the following documents shall be provided to the employee:

- \* Intradepartmental Correspondence from the Assistant to the Director, OAS, advising the employee of the decision to deny promotion;
- \* Copies of all documents used by the Director, OAS, to make the determination that the employee is no longer fit for promotion;
- \* Promotional Suitability Appeal Hearing Report from the Commanding Officer, Personnel Group, to the Chief of Police;
- \* Decision of the Hearing Officer, Administrative Appeal Hearing and Order of the Chief of Police, Form 01.73.01; and,
- \* Rationale of the Chief of Police's decision when the Chief decides to deny promotion.

**VI. PROCEDURES FOR DENIALS OF PROMOTION BASED ON PENDING PERSONNEL COMPLAINT.** Whenever a sworn employee on a promotional eligibility list has an open personnel complaint, the Director, OAS, may place the employee's promotion on hold pending the final adjudication of the open complaint. If the complaint is adjudicated prior to the expiration of the eligibility list, the procedures listed above shall apply if the promotion is denied. A denial of promotion due solely to a pending complaint shall only be made when the published expiration date of a promotional eligibility list is due to expire within 45 calendar days. A "pending complaint" is one that has not received its final adjudication (i.e., Execution of Decision by the Chief of Police or Board of Rights decision). The employee will be notified in writing of the denial of promotion by the Director, OAS.

A sworn employee seeking to appeal a denial of promotion based solely on the basis of a pending personnel complaint may submit a request for a One-Day Status appointment within seven calendar days of the date of the denial of promotion notice. The procedures for making this request are as follows:

- \* Submit an Employee's Report, Form 15.07.00, to Position Control Section, Personnel Division, requesting the One-Day Status appointment along with a Request for Transfer, Reversion or Class Change Under Charter Section 1014, Form General 16-B (Reversion Form, Form Gen. 16-B); and,
- \* Attach a signed "Waiver of One-Day Status Reversion for Denial of Promotion Due to a Pending Complaint of Misconduct," Form 01.73.02, to the Employee's Report.

Upon receiving the One-Day Status request with the waiver, the Commanding Officer, Personnel Division, shall determine if the request meets the criteria, and if so, approve and immediately process the request.

If the allegation(s) in the personnel complaint that resulted in the denial of promotion has been adjudicated as Exonerated, Unfounded, Not Guilty, No Misconduct, Not Resolved, or Non-Disciplinary, the employee may then submit an Employee's Report to the Commanding Officer, Personnel Division, requesting reversion to the civil service rank granted in the One-Day Status Appointment. This Employee's Report shall include a wish list for assignment (geographic patrol and detective divisions only) and their city of residence.

The request for reversion shall be processed following the normal procedures.

**VII. PROCEDURES FOR PENDING APPEALS THAT WILL NOT BE RESOLVED BEFORE THE EXPIRATION OF AN ELIGIBILITY LIST FOR PROMOTION.** Whenever a sworn employee has an active administrative appeal of a denial of promotion for which the final decision of the Chief of Police has not been rendered **and** the published expiration date of the applicable promotional eligibility list is due to expire within 45 calendar days, the employee may submit a request for One-Day Status Appointment. The procedures for making this request are as follows:

- \* Submit an Employee's Report to Position Control Section, Personnel Division, requesting a One-Day Status Appointment;
- \* Submit a Request for Transfer, Reversion or Class Change Under Charter Section 1014, Form General 16-B (Reversion Form, Form Gen. 16-B); and,
- \* Attach a signed "Waiver of One-Day Status Reversion for Denial of Promotion Pending the Outcome of an Administrative Appeal of Said Denial," Form 01.73.03, to the Employee's Report.

Upon receiving the One-Day Status request with the waiver, the Commanding Officer, Personnel Division, shall determine if the request meets the criteria, and if so, approve and immediately process the request.

Once the Decision of the Hearing Officer, Administrative Appeal Hearing and Order of the Chief of Police, Form 01.73.01, has been received and if the decision determines that the employee should be promoted, the employee may then submit an Employee's Report to the Commanding Officer, Personnel Division, requesting reversion to the civil service rank granted in the One-Day Status appointment.

This Employee's Report shall include a wish list for assignment (geographic patrol and detective divisions only) and their city of residence.

The request for reversion shall be processed following the normal procedures.

VIII. **WAIVER OF ONE-DAY STATUS REVERSION FOR DENIAL OF PROMOTION DUE TO A PENDING COMPLAINT OF MISCONDUCT, FORM 01.73.02 - ACTIVATED.** The Waiver of One-Day Status Reversion for Denial of Promotion Due to a Pending Complaint of Misconduct form is activated.

A. **Use of Form.** The employee shall attach this form to the Employee's Report and submit it to the Position Control Section, Personnel Division.

B. **Completion.** The completion of the form is self-explanatory.

C. **Distribution.**

1 - Original, retained by the Employee.

1 - Copy, Position Control Section, Personnel Division.

2 - TOTAL

IX. **WAIVER OF ONE-DAY STATUS REVERSION FOR DENIAL OF PROMOTION PENDING THE OUTCOME OF AN ADMINISTRATIVE APPEAL OF SAID DENIAL, FORM 01.73.03 - ACTIVATED.** The Waiver of One-Day Status Reversion for Denial of Promotion Pending the Outcome of an Administrative Appeal of Said Denial form is activated.

A. **Use of Form.** The employee shall attach this form to the Employee's Report and submit it to the Position Control Section, Personnel Division.

B. **Completion.** The completion of the form is self-explanatory.

C. **Distribution.**

1 - Original, retained by the Employee.

1 - Copy, Position Control Section, Personnel Division.

2 - TOTAL

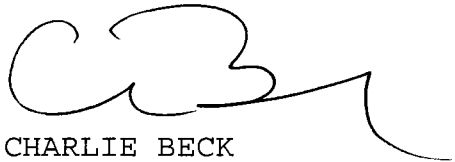
March 4, 2010

**FORMS AVAILABILITY.** The Waiver of One-Day Status Reversion for Denial of Promotion Due to a Pending Complaint of Misconduct; and the Waiver of One-Day Status Reversion for Denial of Promotion Pending the Outcome of an Administrative Appeal of Said Denial forms are available on LAPD Forms. Both forms are attached for immediate use and duplication.

**AMENDMENTS:** This Order amends Section 2/092.80 and adds Section 3/761 to the Department Manual.

**MONITORING RESPONSIBILITY:** The Employee Relations Administrator shall have monitoring responsibility for this directive.

**AUDIT RESPONSIBILITY:** The Commanding Officer, Internal Audits and Inspections Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

A handwritten signature in black ink, appearing to be 'CB' with a long horizontal stroke extending to the right.

CHARLIE BECK  
Chief of Police

Attachments

DISTRIBUTION "D"



# WAIVER OF ONE-DAY STATUS REVERSION FOR DENIAL OF PROMOTION DUE TO A PENDING COMPLAINT OF MISCONDUCT

I, \_\_\_\_\_, Serial No. \_\_\_\_\_, freely and knowingly agree to the terms of this waiver as a condition of accepting a One-Day Status appointment from the Los Angeles Police Department to another civil service rank.

I understand that my promotion to the rank of \_\_\_\_\_ has been placed on hold due to a pending investigation of misconduct, CF No. \_\_\_\_\_. I further understand that the final disposition of the personnel complaint may not be reached before the List of Eligibles for promotion expires and as a result I have been granted a one-day promotion to the rank of \_\_\_\_\_.

I hereby agree that if the final disposition of the allegations(s) in CF No. \_\_\_\_\_ that led to the denial of promotion is adjudicated as "Sustained" or if I am found "Guilty" at a Board of Rights, I waive my right to request reversion, as set forth in the City Charter and the Rules of the Civil Service Commission, to the civil service rank granted in the one-day status appointment.

I understand that despite having waived my right to request reversion, I am free to compete in the civil service testing process for that rank in the future.

I hereby waive my right to request reversion if the final disposition of the allegation(s) in CF No. \_\_\_\_\_ that led to the denial of promotion is adjudicated as "Sustained" or if I am found "Guilty" at a Board of Rights I further release and forever discharge the City and the Department (hereinafter collectively referred to as "Releasees"), of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether for compensatory, punitive or any other form of damages, which are based solely upon denial of promotion as a result of my acceptance of a One-Day Status appointment and my waiver of the right to reversion. However, this release shall not apply to seeking administrative review of the charges at a Board of Rights, and/or judicial review of the Board of Rights decision thereafter. This waiver, release and discharge shall be fully binding to all parties.

Before signing this Waiver and Release, I acknowledge I have had the opportunity to consult with an attorney of my own choosing regarding the release of such claims.

\_\_\_\_\_  
(Employee's Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Employee's Name)

Serial No. \_\_\_\_\_

01.73.02 (03/10)

**WAIVER OF ONE-DAY STATUS REVERSION FOR DENIAL OF  
PROMOTION PENDING THE OUTCOME OF AN  
ADMINISTRATIVE APPEAL OF SAID DENIAL**

I, \_\_\_\_\_, Serial No. \_\_\_\_\_, freely and knowingly agree to the terms of this waiver as a condition of accepting a One-Day Status appointment from the Los Angeles Police Department to another civil service rank.

I understand that I have been denied promotion and that I have appealed that denial per existing procedures for such an appeal. I further understand that the final decision by the Chief of Police on my appeal may not be received before the List of Eligibles for promotion expires and as a result I have been granted a one-day promotion to the rank of \_\_\_\_\_.

I hereby agree that if the final decision by the Chief of Police of my appeal does not recommend that I be promoted, I waive my right to request reversion, as set forth in the City Charter and the Rules of the Civil Service Commission, to the civil service rank granted in the One-Day Status appointment.

I understand that despite having waived my right to request reversion, I am free to compete in the civil service testing process for that rank in the future.

I hereby waive my right to request reversion if the final decision by the Chief of Police of my appeal does not recommend that I be promoted. I further release and forever discharge the City and the Department (hereinafter collectively referred to as "Releasees"), of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether for compensatory, punitive or any other form of damages, which are based solely upon denial of promotion as a result of my acceptance of a One-Day Status appointment and my waiver of the right to reversion. However, this release shall not apply to seeking judicial review of the Chief's final decision following the appeal of the denial of promotion. This waiver, release and discharge shall be fully binding to all parties.

Before signing this Waiver, I acknowledge I have had the opportunity to consult with an attorney of my own choosing regarding the release of such claims.

\_\_\_\_\_  
(Employee's Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Employee's Name)

Serial No. \_\_\_\_\_